

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Auction of Flexible-Use Service Licenses)	AU Docket No. 21-62
in the 3.45-3.55 GHz Band (Auction 110))	

COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)¹ submits these comments in response to the Federal Communications Commission’s (“Commission”) Auction 110 Public Notice, its Supplemental Initial Regulatory Flexibility Analysis (“IRFA”), and Paperwork Reduction Act Analysis. RWA’s membership is excited to participate in Auction 110, and to potentially be able to put more mid-band spectrum to use for their rural customers. While RWA supports certain elements of the Public Notice, it has concerns regarding the proposed certification requirements, minimum opening bids, and the IRFA. In addition, RWA believes the Commission should delay Auction 110 to allow small and rural bidders to raise sufficient capital, and further account for small and rural bidders’ need for outside consultants in considering auction materials.

I. Auction 110’s timing does not allow sufficient time for small and rural bidders to raise capital

The Commission’s Auction 110 timeline is too aggressive given the recent C-band auction. The Commission’s C-band auction, Auction 107, raised a record \$81 billion in gross

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve consumers who, reside, work, or travel in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

bids, for which final payments only came due March 24, 2021.² After the conclusion of a spectrum auction, winning bidders need time to prepare, budget, and obtain financing for the next spectrum auction. The proposed near back-to-back nature of Auctions 107 and 110 provide prospective bidders with insufficient time to prepare for Auction 110, to the inevitable detriment of Auction 110 proceeds, and the public in need of additional mid-band service. RWA agrees with Smith Bagley, Inc., that Auction 110 needs to be delayed in order to allow small and rural wireless providers (as well as all larger carriers) ample and “meaningful opportunity” to compete in Auction 110.³ While large carriers are anxious to consolidate additional mid-band spectrum for 5G, many have taken on exorbitant debt to cover Auction 107 costs, and do not currently have access to the amount of capital that they would need to compete in Auction 110. Small and rural carriers also need additional time to secure capital for Auction 110. Moreover, small and rural service providers—and their customers—are still reeling from the economic effects of the COVID-19 pandemic.

The Commission specifically acted to enhance small carriers’ ability to “compete for licenses at auction” by establishing 10 MHz blocks for Auction 110.⁴ Small and rural bidders cannot compete for licenses at auction without additional time to secure bidding capital. Working backwards from the Commission’s proposed October 2021 Auction 110 bidding start timeline—the short-form application filing deadline will likely be due sometime in August 2022, and capital requirements dictated in the upcoming Auction 110 Procedures Public Notice

² See generally *Auction of Flexible-Use Licenses in the 3.7-3.98 GHz Band Closes; Winning Bidders Announced for Auction 107; Down Payments Due March 10, 2021, FCC Forms 601 and 602 Due March 10, 2021, Final Payments Due March 24, 2021*, Public Notice, DA 21-207 (OEA, WTB Feb. 24, 2021).

³ See Letter from Justin E. Hinkle, President, Smith Bagley, Inc., to Marlene H. Dortch, Secretary, FCC, AU Docket No. 21-62 et al., at 1 (filed Mar. 10, 2021).

⁴ See *Facilitating Shared Use in the 3100-3550 MHz Band*, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, FCC 21-32, at 24, para. 59 (Mar. 18, 2021) (3.45 GHz Second R&O).

sometime in May 2021 at the earliest, or July 2021 at the latest.⁵ This timeline only allows those recovering from the expense of Auction 107 and the Pandemic two to three months from the due date of the instant comments to secure capital. RWA estimates that small and rural bidders require an additional six to nine months beyond the present Summer 2021 Procedures Public Notice release date to secure bidding capital. Small and rural bidders are particularly vulnerable to the economic and labor strains of keeping their networks functional during the ongoing Pandemic, and need additional time to both balance their finances in light of Auction 107 payments coming due, and to assess network capacity and capabilities to make informed bidding decisions. RWA accordingly asks the Commission to delay the short-form application filing deadline until the end of first quarter 2022.

While RWA recognizes the existence of a Congressional mandate that the Commission “begin a system of competitive bidding” no later than December 31, 2021,⁶ the Commission has discretion to delay the commencement of auctions, which it implemented in executing its 2.5 GHz spectrum auction, Auction 108. There, while the Commission adopted the 2.5 GHz Report and Order in July 2019,⁷ the Commission did not adopt the related Comment Public Notice until January 2021.⁸ It is generally accepted that that such systems of competitive bidding begin upon the Commission’s publication of auction Comment Public Notices. As such, the Commission has met its congressional mandate under the 2021 Consolidated Appropriations Act, and has discretion to delay the rest of Auction 110’s proceedings. Accordingly, RWA asks the

⁵ See generally FCC, *Pre-Auction Timeline*, <https://www.fcc.gov/pre-auction-timeline> (last visited Apr. 13, 2021).

⁶ See Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong., Div. FF, Title IX § 905(d)(1)(B) (2020).

⁷ See generally *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (2.5 GHz Order).

⁸ See generally *Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 108*, Public Notice, 36 FCC Rcd 645 (2021) (Auction 108/2.5 GHz Comment Public Notice).

Commission to delay the deadline for filing the Auction 110 short-form application until the end of first quarter 2022.

II. The proposed certification requirements do not meet their intended purpose

With respect to the Commission's proposed certification under penalty of perjury,⁹ RWA believes that penalty draconian, and unrelated to its stated purpose of preventing defaults. The Commission asks that a short-form applicant certify

it has read the public notice adopting procedures for the auction and that it has familiarized itself both with auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45-3.55 GHz band. We believe that this requirement *would help ensure that the applicant* has reviewed the procedures for participation in the auction process and has investigated and *evaluated those technical and marketplace factors that may have a bearing on its potential use of any licenses won at auction.*¹⁰

RWA members submit that even the most experienced auction bidders do not completely understand the Commission's auction procedures at the time they certify their short form application, and must hire outside consultants such as engineers, legal counsel, and auction experts to fully understand the nuances of individual Commission auction rules. Given that the Commission does not release all auction information and materials until after the short-form stage, it is premature to expect applicants to certify to nuances before short-form filing. As RWA comments below on the Auction 110 Comment Public Notice's IRFA,¹¹ the Commission severely underestimates the amount of sophistication required to understand and bid at auctions, to the detriment of small and rural applicants. Large bidders can readily call upon staff dedicated to understanding and implementing auctions, something small and rural carrier-bidders cannot.

⁹ Auction 110 Comment Public Notice at 6, para. 12.

¹⁰ *Id.* at 6, para. 12 (emphasis added).

¹¹ See section IV, below.

Additionally, determining all of the “technical and marketplace factors that may have a bearing on [an applicant’s] potential use of any licenses won at auction” is an overly broad statement to certify to especially when technical and marketplace factors can change dramatically over time.

In RWA’s estimation, a major cause of defaults is a lack of knowledge about auction procedure prior to the short-form stage. In the alternative, if the Commission adopts this proposal, the Commission should significantly increase its auction outreach and education efforts, and release *all* auction materials well *before* the short-form filing deadline to better enable prospective applicants to make informed decisions.

III. RWA supports the proposed small business credits and default payments, but opposes the proposed minimum opening bids

RWA agrees with and supports the Commission’s proposed tiered definitions of small and rural business, and the proposed bidding caps for small and rural businesses.¹² RWA specifically supports defining “small business” as an “entity with average gross revenues for the preceding five years not exceeding \$55 million.”¹³ RWA also supports and agrees with the 15% bidding credit for “small business” as proposed in the Auction 110 Comment Public Notice.¹⁴ RWA additionally supports the proposed definition of “very small business” as “an entity with average annual gross revenues for the preceding five years not exceeding \$20 million,” as well as the 25% bidding credit for “very small business.”¹⁵ RWA applauds the Commission’s emphasis on facilitating rural participation via the 15% rural service provider bidding credit for “entities

¹² See Auction 110 Comment Public Notice at 6-8, paras. 14-16.

¹³ *Id.* at 7, para. 14.

¹⁴ *Id.*

¹⁵ *Id.*

providing commercial communications services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas.”¹⁶

RWA also supports the proposed additional 15% default payment which is applied to those bidders who fail to timely pay the bid amounts owed on the spectrum licenses won.¹⁷ As demonstrated by past auctions, it is critical that auction participants take the Commission’s rules and processes seriously and not tie up spectrum that can otherwise be put to use. When an applicant defaults, that licensed spectrum is unavailable until the Commission holds another spectrum auction for the defaulted licenses—meaning that the next-highest bidder could have gained spectrum access and timely put it to use. Raising the default penalties will serve as a deterrent to those that fail to purchase the spectrum won at auction.

While RWA supports the principle of a two-tiered approach to minimum opening bids imposing higher minimum opening bids on licenses in larger urban market than licenses in less populated areas, RWA opposes the Commission’s proposed specific minimum opening bids when there is at least one rural county included in the top fifty markets. The Commission proposes establishing minimum opening bids of \$0.06 per MHz-pop for Partial Economic Areas (“PEAs”) 1-50 and \$0.02 per MHz-pop for all other PEAs.¹⁸ The adverse impact of the Commission’s ill-founded decision to use PEAs as license areas in this auction¹⁹—which the record shows will impede the ability of small rural carriers to compete for licenses, and rural areas to receive broadband service from auctioned licenses—will also flow through the proposed minimum opening bids. In the context of minimum opening bids, the Commission fails to

¹⁶ *Id.* at 7, para. 14.

¹⁷ *See* Auction 110 Comment Public Notice at 14, para. 38.

¹⁸ *See id.* at 21, para. 70.

¹⁹ *See* 3.45 GHz Second R&O, at 41, para. 111.

recognize that the top 50 PEAs contain rural counties in addition to urban counties.²⁰ For example, PEA 2, Los Angeles, California, encompasses most of Southern California, and stretches from the Pacific Ocean to Nevada, and contains a rural county.²¹ In PEA 11, Atlanta, Georgia, ten of that PEA’s thirty-six counties are rural.²² Almost half the counties in the Houston PEA, PEA 10, qualify as rural.²³ In some cases, the proposed minimum opening bids will impede small businesses and rural providers from bidding on licenses in their home markets when their rural counties are included in those top 50 PEAs. Moreover, as proposed, Auction 110’s by-population build out requirement all but guarantees construction efforts in these major market PEAs will focus on densely populated urban areas, once again leaving rural areas on the wrong side of the digital divide when it comes to access to mid-band spectrum.

To address these concerns, RWA proposes the Commission modify its proposed minimum opening bids, to change the minimum opening bid for any top 50 PEA that contains at least one rural county (defined as having a population density of 100 people per square mile or less) to \$0.02 per MHz-pop. This will allow small carriers vying for licenses in the top 50 PEAs

²⁰ See generally Auction 110 Comment Public Notice at 7, para. 14 (defining “small,” “very small,” business and setting caps for small, very small businesses, and rural providers).

²¹ The Commission has defined a rural area as a county having a population density of 100 persons per square mile or less, based on the most recently available Census data. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-based Services, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, 19087, para. 11 (2004). Of the 7 counties in the Los Angeles PEA—PEA 2—one, San Luis Obispo County, qualifies as a rural county. See *Wireless Telecommunications Bureau Provides Details About Partial Economic Areas*, Public Notice, 29 FCC Rcd 6491, Appx. B (WTB 2014) (PEA Listing) (“List of Counties with Corresponding Partial Economic Area” for PEA 2); see also United States Census Bureau, QuickFacts, <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited Apr. 14, 2021).

²² Of the 36 counties within the Atlanta PEA, PEA 11, 10 of those counties qualify as rural counties: Banks, Elbert, Franklin, Greene, Jasper, Madison, Morgan, Oglethorpe, Rabun, and Taliaferro Counties. See PEA Listing, 29 FCC Rcd 6491 at Appx. B (listing PEA 11 counties); see also United States Census Bureau, QuickFacts, <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited Apr. 14, 2021).

²³ Of the eight counties in PEA 10, three qualify as rural (*i.e.*, Liberty, Waller, and Chambers Counties). See PEA Listing, 29 FCC Rcd 6491 at Appx. B (listing PEA 10 counties); see also United States Census Bureau, QuickFacts, <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited Apr. 14, 2021).

to remain competitive in Auction 110, albeit without the benefit of the rural bidding credit needed due to rural counties being lumped in with the urban areas. If nothing else, allowing this hodgepodge of rural and urban areas at auction should illustrate to the Commission how ill-informed PEA-based licenses are. Licenses based on County or Cellular Market Areas, which by their very design separate urban areas into Metropolitan Statistical Areas (MSAs), and rural areas into Rural Service Areas (RSAs), would better serve bidders interested in primarily serving rural areas where they live and work. By utilizing PEAs, the Commission has all but guaranteed that this spectrum will not be deployed in rural counties associated with a major metropolitan area. Using either county- or CMA-based licenses would be a better fit for the Commission's two-tiered opening bid proposal. If a county-basis were used, rural counties could have opening bids at \$0.02 per MHz/POP, and urban counties at \$0.06 per MHz/POP; in a CMA-based scenario, MSAs could be priced at \$0.06 per MHz/POP, and RSAs could be priced at \$0.02 per MHz/POP.

IV. Supplemental Initial Regulatory Flexibility Analysis and Paperwork Reduction Act Comments

RWA also welcomes the opportunity to comment on the IRFA. The Commission's conclusions on the economic impact on small entities are misinformed.²⁴ The Commission states that it does not "expect the [proposed Auction 110] processes and procedures . . . will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 110" due to the "information, resources, and guidance we make available to potential and actual applicants."²⁵ All of RWA's members—especially those considered small, very small, and rural service providers as proposed in the Auction 110 Comment Public Notice—regularly consult attorneys, engineers, and consultants to participate in Commission auctions.

²⁴ See Auction 110 Comment Public Notice at 29-30, paras. 111-114.

²⁵ *Id.* at 29, para. 111.

Unlike major carrier bidders, RWA member carriers often do not keep attorneys, engineers, and other consultants versed in Commission auctions on staff, and must consequentially lean on outside consultants every time, to the tune of \$100,000 on average per auction.

While RWA commends the Commission's outreach and bidder-education efforts, those efforts do not currently sufficiently inform small entities, given that the Commission does not release all pertinent auction related materials until after the short-form stage. Small entity bidders consequently cannot make complex decisions on the future impacts of auction bidding, participation, and winning-bidder compliance requirements without outside counsel. Any legal advice rendered by the FCC Auctions Technical Support Hotline²⁶ cannot be relied upon, and small entities are and will be incapable of making such consequential decisions without outside assistance.

The Commission also seeks comment on Paperwork Reduction Act information collection burdens for small entities with fewer than 25 employees.²⁷ As noted above, RWA members spend on average \$100,000 on outside consultants in connection with participation in a spectrum auction. Small entities rely upon outside consultants to fully comply with Commission auction requirements, spending many hours and capital above and beyond what the Commission presently estimates, to make a truly informed decision.

As such, RWA suggests the Commission reassess its small entity impact statements, and its Auction 110 Paperwork Reduction Act estimates to align with real world costs and time spent. In the alternative, the Commission should release all auction information well in advance of the short-form stage, and expand bidder education and outreach to truly ensure that small entity bidders are fully informed.

²⁶ See *id.* at 30, para. 112.

²⁷ See *id.* at 31, para. 119.

V. CONCLUSION

While RWA commends the Commission on its attempt to ensure small and rural bidders have an equal footing in the auction, as proposed, the execution of that attempt serves to burden small and rural bidders even more—by not accounting for the additional time needed to raise capital for Auction 110, and not accounting for small and rural bidders’ need for outside consultants in understanding and complying with Auction information that will likely be released in piecemeal fashion. The Commission could remedy these defects by scheduling the Auction 110 short-form application filing deadline to the end of March 2022, lowering opening bids for those PEAs that include at least one rural county, releasing all information about the spectrum and the license process and providing educational outreach before the short-form filing deadline, and conducting the bidding for the spectrum based on counties or CMAs.

Respectfully submitted,

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